

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV025515-910

MERIDIAN RENEWABLE
ENERGY LLC,

Plaintiff,

v.

BIRCH CREEK DEVELOPMENT,
LLC,

Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the *Determination Order* issued on 14 May 2025 by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a). (Determination Order, ECF No. 1.)

2. On 14 August 2024, Plaintiff Meridian Renewable Energy LLC (Meridian) filed the Complaint (the Complaint), thereby initiating this action in Wake County Superior Court. (Compl., ECF No. 2.) In the Complaint, Meridian asserts claims against Defendant Birch Creek Development, LLC (Birch Creek) for breach of contract, breach of the duty of good faith and fair dealing, declaratory judgment, and, in the alternative, quantum meruit. (See Compl. ¶¶ 25–46.)

3. Meridian subsequently filed a First Amended Complaint on 24 September 2024, (ECF No. 3), asserting the same four claims for relief as included in the Complaint, but referencing a reciprocal attorney fee provision in its first claim for relief and adding the same to its prayer for relief. (See 1st Am. Compl. ¶¶ 26–49.)

4. Meridian later filed a Second Amended Complaint on 25 April 2025, also asserting the same four claims for relief, but adding clarifying facts related to the Scope of Work (SOW) agreements between the parties and Pine Gate Renewables, LLC (Pine Gate). (See 2d Am. Compl. ¶¶ 34-59.)

5. On 9 May 2025, Birch Creek filed a Notice of Designation (the NOD) with the Wake County Clerk of Superior Court, contending that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(1) and (b)(2). (Notice Designation, ECF No. 6 [NOD].) Prior to the Court's ruling on the Determination Order, Meridian filed its Opposition to Designation as a Mandatory Complex Business Case (Opposition) on 14 May 2025, contending this action should not be designated under N.C.G.S. § 7A-45.4(a)(1) or (b)(2) because (i) the Court need not construe the North Carolina Uniform Partnership Act (Ch. 59) in this case and (ii) the NOD was untimely filed.¹ (See Opp'n Designation Mandatory Complex Bus. Case, ECF No. 7 [Opp'n].)²

6. “For a case to be certified as a mandatory complex business case, the pleading upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4.” *Composite Fabrics of Am., LLC v.*

¹ As the Court has previously explained, given the wording of section 7A-45.4(b)(2) and (g), “*even if untimely*, if a case is properly designated under subsection (a), and properly involves a claim for more than five million dollars, the Court MUST designate the action as a mandatory complex business case pursuant to section 7A-45.4(b)(2).” *Hedgepeth v. Cornblum*, 2025 NCBC LEXIS 29, at *4–5 (N.C. Super. Ct. Mar. 17, 2025) (emphasis added). Therefore, Meridian's untimeliness argument as to subsection (b)(2) raised in the Opposition is without merit.

² Because the Court believes that Meridian's Opposition is straightforward, the Court enters this Order before any response has been received by Birch Creek.

Edge Structural Composites, Inc., 2016 NCBC LEXIS 11, at *11 (N.C. Super. Ct. Feb. 5, 2016). According to the NOD, Birch Creek seeks designation of this action as a mandatory complex business case based on the allegations of the Second Amended Complaint. (*See* NOD 3.)

7. “If a party amends a pleading, and the amendment raises a new material issue listed in N.C.G.S. § 7A-45.4(a), any party may seek designation of the action as a mandatory complex business case within the time periods set forth in subsection 7A-45.4(d).” BCR 2.3(a). The NOD bases designation on a contention that the Second Amended Complaint includes a material issue related to a dispute involving the law governing corporations, partnerships, and limited liability companies pursuant to section 7A-45.4(a)(1). (*See* NOD 1.) Specifically, according to Birch Creek, the law governing partnerships is implicated because Meridian alleges that Pine Gate and Birch Creek are joint venture partners. (*See* NOD 3–4.) Birch Creek points to Meridian’s third claim for relief, which asks the Court for a “declaratory judgment regarding the nature and terms of the relationship between the parties, and their respective rights and obligations in that relationship, pursuant to North Carolina’s Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 *et seq.*” (NOD 3–4; 2d Am. Compl. ¶ 51.) Birch Creek further asserts that this claim is “an acknowledgment that ‘the nature and terms of the relationship’ between Meridian and the Pine-Birch JV and between Pine Gate and Birch Creek as joint venture partners are material issues in the case at the instance of Meridian as well as of Pine Gate.” (NOD 4.)

8. However, the claims asserted in the Second Amended Complaint are either identical to or not materially different from those asserted in the original Complaint. (*Compare* Compl. ¶¶ 25–46, *with* 2d Am. Compl. ¶¶ 34–59.) In fact, paragraph 51 of the Second Amended Complaint—cited by Birch Creek in support of designation under N.C.G.S. § 7A-45.4(a)(1)—is identical to paragraph 39 of the Complaint. As such, the Complaint was the first pleading to raise a possible basis for designation under section 7A-45.4(a),³ and Birch Creek should have filed the NOD “within 30 days of receipt of service of the pleading[.]” N.C.G.S. § 7A-45.4(d)(3).

9. As Birch Creek accepted service of the Complaint on 26 August 2024, the NOD should have been filed on or before 25 September 2024. (*See* Aff. Serv., ECF No. 8; *see also* Corrected Aff. Serv., ECF No. 9.) Given that Birch Creek did not seek designation until 9 May 2025, the Court concludes that designation based on the Second Amended Complaint is untimely. *See Epes Logistics Servs., Inc. v. Stone*, 2022 NCBC LEXIS 66, at *3–4 (N.C. Super. Ct. June 27, 2022) (holding designation based on amended complaint was untimely where the claims in the complaint and amended complaint were either identical or not materially different); *see also Performance Rehab Assocs., P.C. v. Wolverine Est. Ltd. Fam. Tr. XIV, LLC*, 2022 NCBC LEXIS 4, at *3–5 (N.C. Super. Ct. Jan. 21, 2022) (holding designation based on counterclaims

³ Although Birch Creek points to its Motion to Dismiss filed contemporaneously with the NOD as further proof that a material issue involving partnerships is present in this case, pursuant to N.C.G.S. § 7A-45.4(d), designation must be based on the pleading seeking relief, not a subsequently filed motion. *See Mary Annette, LLC v. Crider*, 2022 NCBC LEXIS 41, at *6–7 (N.C. Super. Ct. May 4, 2022) (concluding “the Court may not consider any issues raised in a subsequently filed motion when determining whether designation is proper under [section 7A-45.4(a)]”).

was untimely where counterclaims did not provide a new basis for designation not already present in the complaint).

10. Birch Creek also asserts that designation is proper under N.C.G.S. § 7A-45.4(b)(2). Subsection (b)(2), which governs cases that *must* be designated to the Business Court—termed “mandatory mandatory” cases—provides that “[a]n action described in subdivision (1), (2), (3), (4), (5), or (8) of subsection (a) of this section in which the amount in controversy computed in accordance with G.S. 7A-243 is at least five million dollars (\$5,000,000) shall be designated as a mandatory complex business case by the party whose pleading caused the amount in controversy to equal or exceed five million dollars (\$5,000,000).” N.C.G.S. § 7A-45.4(b)(2). Accordingly, the action must satisfy the requirements for designation under section 7A-45.4(a) *and* contain an amount in controversy of at least five million dollars.

11. According to section 7A-45.4(b)(2), “the amount in controversy [shall be] computed in accordance with G.S. 7A-243[,]” which focuses on the “relief prayed” for in determining the amount in controversy. N.C.G.S. § 7A-45.4(b)(2); *id.* § 7A-243. Rule 8 of the North Carolina Rules of Civil Procedure requires that “[i]n all actions involving a material issue related to any of the subjects listed in G.S. 7A-45.4(a)(1), (2), (3), (4), (5), or (8), the pleading shall state whether or not relief is demanded for damages incurred or to be incurred in an amount equal to or exceeding five million dollars (\$5,000,000).” N.C.G.S. § 1A-1, Rule 8(a)(2).

12. The Second Amended Complaint alleges “Meridian has been damaged by Birch Creek’s existing breaches of SOW 7 and SOW 4 in the amount of \$997,500 . . . [and] Meridian has been harmed as a result of Birch Creek’s anticipatory repudiation and has suffered or will suffer additional damages of up to \$5,100,000.” (2d Am. Compl. ¶¶ 39, 41.) According to Birch Creek, Meridian should have filed a notice of designation with the Second Amended Complaint under N.C.G.S. § 7A-45.4(b)(2), which added the additional damages language to Meridian’s breach of contract claim. (*See* NOD 4.)

13. The Court disagrees. The Second Amended Complaint does not demand damages in excess of five million dollars. Rather, the Second Amended Complaint vaguely provides that Meridian has “suffered or will suffer additional damages of *up to* \$5,100,000.” (2d Am. Compl. ¶ 41 (emphasis added).) Based on the Second Amended Complaint, Meridian has allegedly been damaged in the amount of \$997,500 to date. The Court concludes that the vague assertion of damages of “up to \$5,100,000” does not meet the requirements for designation as a “mandatory mandatory” case under N.C.G.S. § 7A-45.4(b)(2).

14. In addition, as raised in the Opposition, the Court does not believe that N.C.G.S. § 7A-45.4(a)(1) is implicated in this case. (*See* Opp’n ¶¶ 1–5.) The Court does not believe that the existence of a joint venture relationship between Pine Gate and Birch Creek and the implication of partnership law will be material issues in this case. Therefore, the Court concludes that this case was not properly designated under N.C.G.S. § 7A-45.4(b)(2) due to the reasons discussed above.

15. Based on the foregoing, the Court determines that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) or (b) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

16. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 10 that this action is not properly designated as a mandatory complex business case such that the action may be treated as any other civil action, wherein the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Superior Court Judge.

17. The Court's ruling is without prejudice to the right of the parties to otherwise seek designation of this matter as a mandatory complex business case as may be allowed under section 7A-45.4.

SO ORDERED, this the 16th day of May, 2025.

/s/ Michael L. Robinson
Michael L. Robinson
Chief Business Court Judge